RESERVED

CIVIL WRIT PETITION NO. 912 (M/B) Of 2002

Tahir Raza Khan ---------- Petitioner

Versus

State of Uttaranchal & others---------- Respondents

Hon'ble A.A.Dedai, C.J.
Hon'ble M.M.Ghildiyal J.

(Delivered by Hon'ble M.M.Ghildiyal J)

This writ petition has been filed by the petitioner challenging the resolution dated 21.4.2001 contained in annexure 1 to the writ petition passed by the General Body of Cooperative Cane Society Limited Kichha district Udham Singh Nagar in its annual meeting as well as order dated 12.11.2001 of the Cane Commissioner and Registrar Cooperative Cane Society Lucknow.

Heard learned counsel for the parties.

The petitioner is a member of Cooperative Cane Society Limited Kichha district Udham Singh Nagar and by this writ petition he has challenged the resolution passed by the alleged General Body of the Cooperative Society. Thus, it is a dispute between a member and a Cooperative Society, which may be referred to the Registrar for its decision under section 74 of the Act and which may be settled by the Registrar under section 76 of the Act. The petitioner could not challenge the resolution passed by the Society of which he is a member in a petition under Article 226 of the Constitution in view of the fact that he is member of the same society.

Reliance has been placed by the learned Standing Counsel for the State of U.P. in a case Bihar Public Service Commission and another versus Dr. Shiv Jatan Thakur and others, reported in 1994-(SC2)- GJX-0644-SC, in which it has been held as under:-

> " No member of a Public Service Commission could be allowed to question the validity or correctness of the functions performed or duties discharged by the Public Service Commission as a body, while he was its member. It ought be so for the simple reason that such member must be regarded to be a party to the function required to be performed or the duty required to be discharged by the Public Service

Commission as a body or institution, even though he might have been a dissenting member or a member in a minority or a member who had abstained from taking part in such function performed or duty discharged. Discretionary remedy vested in the High Court under Article 226 of the Constitution cannot, therefore, be allowed to be invoked by a member of the Public Service Commission to question the correctness or validity or functions performed or duties discharged by the Public Service Commission as a body or institution, according to well established procedures."

Reliance has further been placed in the case of State of U.P. and another Versus C.O.D. Chheoki Employees ' Cooperative Society Ltd and others, reported in 1997-(SC2)-GJX-0062-Sc, in which it has been held as under:

" Thus, it is settled law that no citizen has a fundamental right under Article 19 (1)(c) to become a member of Cooperative Societies. His right is governed by the provisions of the statute. So the right to become or to continue being a member of the Society is a statutory right. On fulfillment of the qualifications prescribed to become a member and for being a member of the society and on admission he becomes a member. His being a member of society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right quo the society and it is the society that is entitled to represent as corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and bye-laws as he has his right under the Act, rules and the bye-laws and is subject to its operation. The stream cannot rise higher than the source."

Thus, the petitioners may approach the Registrar, Multi-State Cooperative Societies for settlement of dispute, if any.

For the reason recorded above, the petition is dismissed. No order as to costs.

(M.M.Ghildiyal, J.) **(A.A.Desai, C.J.)`**

February 26, 2003
MPS